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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,747	03/25/2004	Steven E. Gradl	03-0598 (370093-00138)	9696
8840	7590	09/06/2006	EXAMINER	
INTELLECTUAL PROPERTY ALCOA TECHNICAL CENTER, BUILDING C 100 TECHNICAL DRIVE ALCOA CENTER, PA 15069-0001				BRITTAIN, JAMES R
		ART UNIT		PAPER NUMBER
		3677		

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/810,747	GRADL, STEVEN E.
	Examiner James R. Brittain	Art Unit 3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 16 June 2006.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6,8-13,18,19,21,24 and 25 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-6,8-13,18,19,21,24 and 25 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 14-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 26, 2005.

This application contains claims 14-17 drawn to an invention nonelected with traverse in the reply filed on October 26, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6, 8-13, 18, 19, 21, 24 and 25 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations ““the first sealant layer and the second sealant layer protruding from the flange” (claim 1, lines 11-12) and “a standoff area formed on the inner surface of the flange having the first sealant layer and the second sealant layer” (claim 1, lines 15-16) indicate that the first and second sealant layers are located on a single flange and are misdescriptive because the sealant layers are located not on the same flange, but on flanges of different profile members. Further, there is not just one standoff area, but two standoff areas, one associated with each

flange. Claim 1 states that “a first sealant layer formed on the outer surface of at least one flange of the first profile member and a second sealant layer formed on the outer surface of at least one flange of the second profile member” (lines 9-11), in other words the first and second sealant layers are on different flanges, the first sealant layer on a flange of the first profile member and the second sealant layer on a flange of the second profile member. The claim construction needs modification so as to consistently point out that the sealant layers are on the appropriate respective flange and also clear up the associated indication of what structures have the standoff areas, i.e. each flange with the sealant layer has a standoff area. Similarly, the limitation “the first sealant layer and the second sealant layer protruding from the outer surface of the flange” (claim 18, lines 11-12) suffers from the same problem because the limitation indicates that the first and second sealant layers are located on a single flange and is misdescriptive because the sealant layers are located not on the same flange, but on flanges of different profile members. Again, the claim construction needs modification so as to consistently point out that the sealant layers are on the appropriate respective flange. Claim 2 is indefinite because there are two standoff areas, one associated with each profile member and it is unclear why the singular is used in line 1. Claim 8 is indefinite because it indicates that “the first sealant layer and the second sealant layer being formed on the edge of the flange” (lines 2-3) and is misdescriptive for similar reasons to claim 1 because the first and second layers are formed on different flanges, not a single flange as indicated in this limitation. Claim 9 is indefinite because it is unclear what flanges are being referred to since claim 1 has been amended to already indicate that the sealant layers are on flanges of both the first profile member and second profile member, so it is not

clear what is being further claimed herein. The remaining claims are indefinite because they depend from indefinite claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18, 19, 21 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (US 5660479) in view of Kettner (US 5749658).

May et al. (figures 5-7, 9-14) teaches a reclosable zipper for positioning between two layers of web material comprising: a first profile member 18, 42 having a base, an interlocking closure element 22 extending from the base and a pair of flanges each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a second profile member 20, 44 having a base, an interlocking closure element 24 extending from the base and a pair of flanges each extending from the base, each flange having an inner surface, an outer surface and an edge spaced from the interlocking closure element; a first sealant layer 26 formed on the outer surface of at least one flange of the first profile member and a second sealant layer 26 formed on the outer surface of at least one flange of the second profile member, the first sealant layer and the second sealant layer protruding from the outer surface of the respective flanges wherein the first sealant layer and second sealant layer define an open air gap between the first profile member and a first layer of web material and second profile member and a second layer of web material. The sealant materials 26 are spaced

apart sufficiently on each profile member to form an air gap therebetween as shown for instance in figures 9 and 10. The difference is that the sealant layers 26 are not teardrop shaped. However, Kettner (figures 5a-5c) shows various shapes of beads or layers and that of figure 5a shows a bead that is generally teardrop shaped and further establishes that it is within the level of skill in the art to vary the shape of the sealant layer. Therefore it would have been obvious to modify the device of May et al. so that the sealant layer is generally teardrop shaped as taught by Kettner to be within the level of skill in the art. In regard to claims 19 and 25, May et al. indicate that the support members 18, 20 can be made from low density polyethylene (col. 4, lines 3-5) and the sealant material from ethylene vinyl acetate, which bonds readily to other polymeric material at low temperatures (col. 4, lines 11-14) and as these are the materials used by applicant, they have the same properties.

Claims 1-4, 6, 8-13 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (US 5660479) in view of Kettner (US 5749658) as applied to claim 18 above, and further in view of Malin et al. (US 5638586).

Further modification of the reclosable zipper of May et al. such that standoff areas are formed on the inner surface of one flange of the first profile member having the first sealant layer and on the inner surface of one flange of the first profile member having the second sealant layer would have been obvious in view of Malin et al. (figure 4) teaching reclosable zipper structure comprising: a first profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the flange having an inner surface and an outer surface; a second profile member having a base, an interlocking closure element extending from the base and at least one flange 56 extending from the base, the

flange having an inner surface and an outer surface; a sealant layer 60 formed on the outer surface of at least one flange of the first profile member and the second profile member, the sealant layer protruding from the flange; and a standoff area 58 formed on the inner surface of the flange having the sealant layer. The standoff area 58 function to both aid in gripping and inhibit the sealing of the flanges 56 to one another as they are being secured to the sheet material (col. 5, lines 48-59). As it would be beneficial to make the fastener of May et al. easier to grip and also improve its assembly on the sheet material, it would have been obvious to provide the inner face of a flange of each profile member with a standoff area as taught by Malin et al. to provide such beneficial functions. As to claim 2, the standoff layer 58 is generally aligned with the sealant layer 60 so that Malin et al. suggests such a modification to the structure of May et al. In regard to claim 3, 4 and 24, not only do May et al. indicate that the support members 18, 20 can be made from low density polyethylene (col. 4, lines 3-5) and the sealant material from ethylene vinyl acetate, which bonds readily to other polymeric material at low temperatures (col. 4, lines 11-14) and as these are the materials used by applicant, they have the same properties, but Malin et al. also indicate that the first and second profile members are formed from polyethylene (col. 5, lines 66-67) and the sealant layer is formed from the heat activated adhesive ethylene vinyl acetate (col. 5, lines 60-65), thereby clearly establishing these materials as being well known in this field of endeavor. As to claim 6, the sealant layer is capable of being extruded with the first and second profile members as indicated by May et al. (col. 5, lines 11-18). In regard to claim 8, Malin et al. suggest that the lower sealant layer 60 is formed at the edge of the flange 56 thereby rendering obvious such use on the device of May et al. In regard to claims 11 and 12, as indicated above, Malin et al. suggests providing a standoff area 58 formed

on the inner surface of the flange having the sealant layer. The standoff area 58 function to both aid in gripping and inhibit the sealing of the flanges 56 to one another as they are being secured to the sheet material (col. 5, lines 48-59). As it would be beneficial to make the fastener of May et al. easier to grip and also improve its assembly on the sheet material, it would have been obvious to provide the inner face of each flange with a standoff area as taught by Malin et al. to provide such beneficial functions.

Claims 5 rejected under 35 U.S.C. 103(a) as being unpatentable over May et al. (US 5660479) in view of Kettner (US 5749658) and Malin et al. (US 5638586) as applied to claim 3 above, and further in view of Offa-Jones (US 2002/0162200).

Further modification of the reclosable zipper of May et al. as modified above such that the standoff area suggested by Malin et al. is formed from the first material would have been obvious in view of Offa-Jones (figure) teaching the location of protruding posts 24 and heels 28 defining standoff areas to either side of the interlocking closure elements over EVA sealant layers 32 that are of the same material as the profile members so as to withstand pressure during the assembly process.

#### ***Response to Arguments***

Applicant's arguments filed June 13, 2006 have been fully considered but they are not persuasive. Applicant argues the new limitation presented in the claims with regard to the new limitation directed to the formation of an air gap. This new limitation requires the application of May et al., a reference that was already of record. Kettner suggests the teardrop configuration as indicated in the first action on the merits.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB